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06                   UNITED STATES DISTRICT COURT  
07                   WESTERN DISTRICT OF WASHINGTON  
08                   AT SEATTLE

09 JEROME TALLEY,    ) CASE NO. C08-0677-TSZ  
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11 Plaintiff,    )  
12    )  
13 v.    ) REPORT AND RECOMMENDATION  
14 T.C. BAILEY,    )  
15    )  
16 Defendant.    )  
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Plaintiff Jerome Talley is currently confined in the King County Jail in Seattle, Washington.

Appearing *pro se*, he recently filed an application to proceed *in forma pauperis* (“IFP”) together with a proposed civil rights complaint, pursuant to 42 U.S.C. § 1983. In the complaint, plaintiff names as sole defendant Seattle Police Officer T.C. Bailey. Plaintiff alleges that on October 22, 2007, Officer Bailey stopped plaintiff, searched him, and confiscated fifty dollars from plaintiff without affording him protections guaranteed by the Due Process Clause of the Constitution.

Plaintiff now seeks a hearing to determine whether he has the right to get the money back. After screening plaintiff’s complaint pursuant to 28 U.S.C. § 1915A, the Court recommends, for the reasons set forth below, that plaintiff’s case be dismissed without prejudice.

01 Where, as here, a prisoner alleges the deprivation of a property interest, the prisoner  
02 cannot state a constitutional claim if the State provides an adequate post-deprivation remedy. *See*  
03 *Zinerman v. Burch*, 494 U.S. 113, 129 (1990) (“[T]he State, by making available a tort remedy  
04 that could adequately redress the loss, had given the prisoner the process he was due.”). It  
05 appears that Washington provides an adequate remedy for the loss of property through the  
06 Washington Tort Claims Act. *See* RCWA § 4.92.090. Accordingly, the present § 1983 action  
07 may not proceed, and the Court recommends that it be DISMISSED without prejudice.<sup>1</sup> In  
08 addition, plaintiff’s IFP application may be DENIED as moot. A proposed Order accompanies  
09 this Report and Recommendation.

10 DATED this 1st day of May, 2008.

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12 Mary Alice Theiler  
13 United States Magistrate Judge  
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21 <sup>1</sup> Because it is clear that any attempt by plaintiff to amend his complaint to cure the above-  
22 described deficiencies would be futile, the Court need not provide plaintiff with an opportunity  
to amend prior to dismissal. *See Flowers v. First Hawaiian Bank*, 295 F.3d 966, 976 (9th Cir.  
2002); *Lucas v. Department of Corrections*, 66 F.3d 245, 248 (9th Cir. 1995) (per curiam).